

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, AT
DIBRUGARH**

Ref : G.R. Case No. 1832/13

U/S. 279/338 OF IPC.

State of Assam

-Vs-

Anupam Das.....Accused.

PRESENT : A.K. BARUAH, LL.M., AJS.
Chief Judicial Magistrate,
Dibrugarh.

APPEARANCE :

Advocate for the Prosecution : Miss D. Gogoi, Asst. P.P
Advocate for the Defence : Mr. Purnanda Hiloidhari.
Date of evidence : 12-5-16, 17-2-18,
25-9-18, 7-3-19,
Date of argument : 25-04-2019.
Date of judgement : 07-05-2019.

J U D G M E N T

1. The case of the prosecution in brief, is that on 17.06.2013, at about 03:40 P.M, while the son in law of the complainant namely Shri Prakash Chetry, was coming by his bicycle on National Highway No. 37 from Kutuha, one DI vehicle bearing registration No. AS-01-DD-9278, which was driven in a very high speed and in a negligent manner hit Prakash Chetry on the road from the backside. In the incident, Prakash Chetry sustained serious injuries, who was admitted in the Srimanta Sankardev Hospital for his treatment. The bicycle of the

victim was also damaged in the incident . The complainant namely Shri Bitupon Gogoi, filed one FIR in the Lepetkata Police Out Post, regarding the incident.

2. On the basis of the FIR lodged by the complainant , a case, bearing Borboruah P.S Case No.05/11, was registered u/s 279/338/427 IPC. Police conducted investigation into the case and filed charge sheet against the accused person namely Anupam Das U/s 279/338/427 IPC.
3. The accused named above appeared in this case. Copies were furnished to him u/s 207 Cr PC. Particulars of offences u/s 279/338 IPC were explained to the accused to which, he pleaded not guilty and claimed to be tried.
4. During the trial of the case, the prosecution side examined 8(Eight) P.Ws in this case. The defence plea is of total denial. The defence side did not adduce any evidence. Accused was examined u/s 313 Cr PC.
5. I have heard the learned counsel for the accused and learned Asst. P.P for the State. Having heard both sides and after perusing the materials on record, the following points for determination are framed for the just decision of the case :-

6. **POINTS FOR DETERMINATION :-**

- i. Whether on 17.06.2013, at about 03:40 P.M, the accused was driving the offending vehicle bearing Registration No. AS-01-DD-9278 in a rash or negligent manner so as to endanger human life or to be likely to cause hurt or injury to any other person ?
- ii. Whether on the same date, time and place, the accused Anupam Das caused grievous hurt to the son in law of the informant namely Shri Prakash Chetry by hitting him by the above mentioned

vehicle while driving the above mentioned vehicle in rash and negligent manner?

DECISION AND REASON FOR THE DECISION :-

- 7.** PW1 (Shri Bitupon Gogoi) deposed in his evidence that his father informed him over phone that Prakash Chetia met with an accident, and then PW1 went to the place of occurrence and saw that Prakash was kept on the side of the road by the public and PW1 took him to the hospital. PW1 found one D.I. Vehicle at the place of occurrence. PW1 identified the FIR as Ext1.

In his cross examination, P.W.1 has deposed that he was not present at the place of occurrence. PW1 does not know who was the driver of the offending DI vehicle.

- 8.** PW2 (Shri Prasanta Gogoi) deposed in his evidence that after hearing the sound of an accident ,he came out and saw that one D.I. Vehicle hit one cycle and dragged the victim and fell him down on a drain. PW2 identified the seizure list as Ext2 and his signature as Ext2(1).

In his cross examination, P.W.2 has deposed that he did not see the driver of the offending DI vehicle .

- 9.** PW3 (Diganta Gogoi) deposed in his evidence that while the brother-in-law of the complainant was about to get into the road after taking some biscuit from the shop of PW3, one D.I. Vehicle hit him from the back side.

In his cross-examination, PW3 deposed that he does not know the two persons , who were present in the car.

- 10.** PW4 (Shri Nabajyoti Neog) deposed in his evidence that he does not know the complainant as well as the accused person of this case. About 2-4 years before, the owner of Rhino

Lawrin company , Guwahati sent PW4 to take back one D.I. car from Lepetkota O.P. Police took the signature of PW4 at the time of handing over the vehicle. PW4 identified his signature as Ext4(1) in Ext4. In cross-examination, PW4 deposed that he did not know about the occurrence of the incident.

11. PW5 (Shri Suren Bailung) deposed in his evidence that in this case, the preliminary investigation was done by ASI Prasanna Gogoi. He started investigation based upon the endorsement made by O/C, Barbaruah P.S. i.e.Ext.1(2) of O/C Rajib Kr Saikia .As PW5 worked under him for a considerable period of time, he is acquainted with his signature. On 27.07.2013, he received the case dairy of this case. On perusal, he noticed that ASI Prasanna Gogoi had already completed preliminary investigation of the matter. Based upon the materials collected by him, he only laid charge sheet in this case. Ext. 5 is the charge sheet as identified by PW5 and Ext.5(1) is his signature as identified by him.

12. PW6 (Shri Prasanna Gogoi) deposed in his evidence that on 09.06.2013, while he was working as an ASI in Lepetkata outpost, one Sri. Bitupan Gogoi lodged one FIR in their police outpost, which was registered at Barbaruah PS and he was entrusted with the investigation. He visited the place of occurrence, recorded the statement of the witnesses and drew the rough sketch map. Ext.7 is the sketch map as identified by him and Ext.7(1) is his signature. During investigation, he collected the medical report of the victim. Ext.8 is the medical report as identified by PW6. He also collected the MVI report. Ext.9 is the MVI report as identified by him. Ext.2 is the seizure list and Ext.2(3) is his signature as identified by him. Ext.3 is the another seizure list and Ext.

3(2) is his signature as identified by him. Ext.4 is the seizure list and Ext.4(1) is his signature as identified by him/PW6.

In his cross examination he further stated that he went to the place of occurrence of the incident.

- 13.** From the above discussion of evidence, it appears that there is no convincing evidence on record which establish that the accused was driving the offending vehicle in a rash or negligent manner at the time of the incident. There is no material or evidence from which I can draw the conclusion that the accused was driving the offending car mentioned above in a rash or negligent manner at the time of occurrence and committed the offences of the case.
- 14.** Prosecution witnesses have not implicated the accused. They do not know how or for whose fault the incident had taken place. It is not established that the accused caused hurt to the victim of the case by his rash or negligent driving. Hence, I have no other alternative, but to hold the points for determination in the negative.
- 15.** In the result, I have not found the accused guilty in this case. Hence, I acquit him from the charges of the case and set him at liberty forthwith.
- 16.** The bail bond will be in force for 6 (six) months from today.
- 17.** Considering the nature of the offence and as compensation can be claimed in MAC case for the victim of the accident, hence the case is not referred to victim compensation.
- Given under my hand and seal of this court on this 7th day of May, 2019.

(A K Baruah)
Chief Judicial Magistrate,
Dibrugarh.

Appendix.

Prosecution Witness :-

PW1 :- Shri Bitupon Gogoi.
PW2 :- Shri Prasanta Gogoi.
PW3 :- Shri Diganta Gogoi.
PW4 :- Shri Nabajyoti Neog.
PW5 :- Shri Suren Bailung.
PW6 :- Sri Prassana Gogoi

Defence witness :-

None

Exhibits :-

Prosecution exhibits :-

Exhibit 1 : FIR
Exhibit 2 : Seizure list
Exhibit 3 : Seizure list
Exhibit 4 : Seizure list
Exhibit 5 : charge-sheet
Exhibit 6 : Nil/ not numbered
Exhibit 7 : Sketch map
Exhibit 8 : Medical Report
Exhibit9 : MVI report

Defence exhibits :-

None

Court witness :- None.

Court exhibits :- None.

CJM, Dibrugarh